

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
RENO, NEVADA

Tarz Mitchell	)	3:08-CV-0382-ECR-RAM
	)	
Plaintiff,	)	MINUTES OF THE COURT
	)	
vs.	)	DATE: February 17, 2011
	)	
Abraham Lopez, et al.,	)	
	)	
Defendants,	)	
	)	
_____	)	

PRESENT: \_\_\_\_\_ EDWARD C. REED, JR. \_\_\_\_\_ U. S. DISTRICT JUDGE

Deputy Clerk: \_\_\_\_\_ COLLEEN LARSEN \_\_\_\_\_ Reporter: \_\_\_\_\_ NONE APPEARING

Counsel for Plaintiff(s) \_\_\_\_\_ NONE APPEARING

Counsel for Defendant(s) \_\_\_\_\_ NONE APPEARING

MINUTE ORDER IN CHAMBERS

On January 19, 2011, Magistrate Judge Robert M. McQuaid, Jr. filed a Report and Recommendation (#54) recommending that Defendants' motion (#37) for summary judgment should be granted in part and denied in part.

The Report and Recommendation states that Defendants' motion (#37) for summary judgment should be granted as to the issues of (i) Plaintiff's conspiracy claim; (ii) Plaintiff's state law claims under NRS §212.020 and NRS §197.200; and (iii) as to Defendants Baca, Watson and Hardy.

The Report and Recommendation states that Defendants' motion (#37) for summary judgment should be denied as to the issues of (i) Plaintiff's alleged failure to exhaust his nonjudicial remedies; (ii) Plaintiff's excessive force claims; and (iii) Plaintiff's retaliation claim.

No objections were filed within the period of time required by the Rules.

The Report and Recommendation (#54) is well taken and is approved and adopted. **IT IS, THEREFORE, HEREBY ORDERED** that Defendants' motion (#37) for summary judgment is **GRANTED** as to the conspiracy claims, state law claims under NRS §212.020 and NRS §197.200, and as to the claims against Defendants Baca, Watson and Hardy; and is **DENIED** as to Plaintiff's alleged

failure to exhaust his nonjudicial remedies, Plaintiff's excessive force claims, and Plaintiff's retaliation claim.

Summary judgment is **DENIED** as to Plaintiff's alleged failure to exhaust his nonjudicial remedies, as Plaintiff did reasonably endeavor to exhaust the non-judicial remedies available through the Nevada Department of Corrections.

Summary judgment is **DENIED** as to Plaintiff's excessive force and retaliation claims, as there are genuine issues of material fact with respect to the claims for excessive force and retaliation.

Summary judgment is **GRANTED** as to the claims against Defendants Baca, Watson and Hardy because there is no respondeat superior basis for liability under 42 USC §1983. Therefore, the supervisory defendants cannot be held liable in this case.

Summary judgment is **GRANTED** as to the conspiracy claims because Plaintiff has not provided any evidence of an agreement or meeting of the minds between Defendants, nor that the deprivation of Plaintiff's rights was the result of such an agreement.

Summary judgment is **GRANTED** as to the state law claims under NRS §212.020 and NRS §197.200 because these sections are strictly criminal in nature and because suit under these sections may only be brought against proper prosecuting authorities, as opposed to private parties.

LANCE S. WILSON, CLERK

By                     /s/                      
Deputy Clerk